

REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended during the recent in person interview with Applicant's attorney on August 16, 2007. The amendments and remarks made by this response are consistent with the proposals and amendments discussed during the interview.

The Final Office Action, mailed July 13, 2007, considered and rejected claims 1-41. Claim 41 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. However, this rejection is now moot in view of the cancellation of claim 41. Claims 1, 13, 14 and 16 were rejected under 35 U.S.C. 102(e) as being anticipated by Johnson (US 2004/0073890) hereinafter *Johnson*. Claims 2-12 and 21-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Johnson* in view of Ruffolo (US 2003/0196190) hereinafter *Ruffolo*. Claims 15, 17, 25, 39 and 41 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Johnson* in view of admitted prior art (APA) of paragraph [0007] of Applicant's background. Claims 18-20, 26-38 and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Johnson* in view of the admitted prior art (APA) of paragraph [0007] of Applicant's background and in further view of *Ruffolo*.

By this paper, claims 1, 21 and 41 have been cancelled, while claims 2, 13, 15-17 and 23-24 have been amended and new claims 42-44 have been amended.¹ Accordingly, claims 2-20, 22-40 and 42-44 remain pending, of which claims 17 and 25 are the only independent claims at issue.

Claims 17 and 25 are directed to related embodiments for testing software wherein at least two different verification levels are provided for testing the software and wherein selection of a first verification level causes testing and which includes invoking an insert record object to determine if the invocation of the insert record object results in a system crash and while refraining from producing any recorded output, and wherein selection of a second verification level causes testing by invoking an insert record object and verification through recorded output that a record corresponding to the insert record object was properly inserted and present.

It will be noted that the only pending independent claims at issue, claims 17 & 25, were rejected under §103 in view of *Johnson* and APA.

¹ Support for the amendments and new claims includes the disclosure found in paragraphs 25, 30, and claim 1, as referenced and discussed during the interview.

Johnson discloses a testing system in which numerous text cases are run against various system configurations to generate a testing matrix. *Johnson* fails to disclose or suggest any embodiment, as claimed, however, in which different verification levels correspond to different tests and wherein selection of a first verification level causes testing "while refraining from producing any recorded output," as claimed in combination with the other recited claim elements. In fact, it was acknowledged in the last action that *Johnson* fails to disclose the running of a test without producing recorded output. In an attempt to compensate for the failings of *Johnson*, the Examiner asserts that APA teaches this limitation. However, as discussed during the interview and as previously asserted, APA does not teach that a test is run without producing recorded output. In particular, Applicant's Application actually teaches just the opposite by stating that the "output produced or recorded" during prior art stress testing is ignored. (see [0009]). This disclosure and the other disclosure referenced above (paragraphs [0006]-[0009]) clearly indicates that prior art stress tests did produce recorded output. It was just ignored. Accordingly, it is clear that claims 17 and 25 are distinguished from the cited art of record, including the disclosed prior art embodiments referenced in the Application, inasmuch as these claims include the running of a test while refraining from producing recorded output.

In view of the foregoing, it is not necessary to further amend the claims. Nevertheless, the claims have been further amended to even further distinguish the claims from the cited art, by clarifying that selection of the first verification level causes the invocation of an insert record object to determine if the invocation of the insert record object results in a system crash and while refraining from producing any recorded output, and wherein selection of a second verification level causes testing by invoking an insert record object and verification through recorded output that a record corresponding to the insert record object was properly inserted and present. This claimed embodiment is clearly distinguished from the cited art and even the purported APA.

The new claims also further distinguish from the cited art, including claims 42 and 43, by clarifying how the selection of a third verification level can cause verification that a record was only inserted a single time (claim 42) or that the record was inserted without overwriting another record (claim 43).

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice.²

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 28th day of September, 2007.

Respectfully submitted,



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² Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record. Furthermore, although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.